

HOUSE BILL NO. 551

INTRODUCED BY G. FORRESTER

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE BOND FROM \$25,000 TO \$35,000 FOR NEW MOTOR VEHICLE DEALERS, USED MOTOR VEHICLE DEALERS, NEW OR USED RECREATIONAL VEHICLE DEALERS, TRAILER DEALERS, AUTO AUCTION LICENSEES, AND WHOLESALERS OF USED MOTOR VEHICLES, USED RECREATIONAL VEHICLES, TRAILERS, MOTORCYCLES, ~~QUADRICYCLES~~ QUADRICYCLES, OR SPECIAL MOBILE EQUIPMENT; AND AMENDING SECTIONS 61-4-101, 61-4-120, AND 61-4-125, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-4-101, MCA, is amended to read:

"61-4-101. Dealer's license -- types of licenses and terms -- plates -- bonds -- zoning. (1) Except as provided in 61-4-125, a person may not engage in the business of buying, selling, exchanging, accepting on consignment, or acting as a broker of a new motor vehicle or used motor vehicle, new or used recreational vehicle, trailer, motorcycle, quadricycle, or special mobile equipment for which a certificate of ownership has not been issued and that is not registered in the person's name, unless the person is the holder of a dealer's license issued by the department under this part.

(2) (a) The department is authorized to issue a dealer's license for one or more specified vehicle types to any person that it determines is qualified to hold a license under the provisions of this section. A dealer's license may be issued for, and restricted to, one or more of the following vehicle types:

(i) new motor vehicle;

(ii) used motor vehicle;

(iii) new recreational vehicle;

(iv) used recreational vehicle;

(v) trailer of any size; or special mobile equipment; or

(vi) motorcycle or quadricycle.

(b) For each type of dealer's license authorized, the department shall design and issue dealer and demonstrator plates as provided in 61-4-102 and 61-4-129.

(c) With the exception of a licensed new motor vehicle dealer, a dealer licensed for a particular type of vehicle may sell, trade, or accept on consignment only vehicles of the type for which the license is authorized, unless the dealer's license specifically refers to more than one vehicle type, such as a motorcycle or quadricycle license. A new motor vehicle dealer is authorized to sell, trade, or accept on consignment new motor vehicles or used motor vehicles.

(d) Regardless of vehicle type, a dealer's license issued by the department has a term of 1 calendar year, commencing on or after January 1 in the year of issue and expiring on December 31 of the same year.

(3) (a) An applicant for a dealer's license shall submit a written application for a dealer's license to the department, specifying the type or types of dealer's license sought. The application must be signed by the applicant and contain a verification by the applicant, under penalty of law, that the information contained in the application is true and correct. Any information provided in the license application process is subject to independent verification by the department or a duly authorized representative of the department.

(b) After examining a license application and conducting an investigation necessary to verify the information contained in the application and if the department is satisfied that the applicant qualifies for the issuance of a license under the provisions of this chapter, the department may issue the license. The department may refuse, after examination and investigation, to issue a license to an applicant who is not qualified for licensure or whose prior financial or other activities or criminal record, as determined by the department:

- (i) ~~pose~~ poses a threat to the effective regulation of dealers, wholesalers, or auto auctions;
- (ii) ~~pose~~ poses a threat to the public interest of the state; or
- (iii) ~~create~~ creates a danger of illegal or deceptive practices being used in the conduct of the proposed dealership, wholesaler, or auto auction.

(4) To be qualified for licensure as a dealer, an applicant shall provide to the department the following:

- (a) the name under which the applicant intends to conduct business and the name, address, date of birth, and social security number of any person who possesses or will possess an ownership interest in the business for which the license is sought. If the applicant is a corporation, the personal information required in this subsection (4)(a) must be provided for each corporate officer and the person designated

1 by the corporation to manage or oversee the dealership.

2 (b) for each person subject to the provisions of subsection (4)(a), whether the person has:

3 (i) an ownership interest in a vehicle dealership or a wholesaler business in Montana or another
4 jurisdiction and if so, the name and address of each dealership or wholesaler; and

5 (ii) been found guilty of, or pleaded guilty to, a felony in this or any other jurisdiction and if so,
6 provide a summary of the conduct resulting in the felony charge, including the dates of the conduct and
7 any court proceedings pertaining to the conduct and the name and address of any court in which the
8 matter was heard;

9 (c) the name, address, and telephone number of the insurance carrier from whom the applicant
10 has acquired garage keepers liability insurance and the name, address, and telephone number of the local
11 insurance agent for the carrier and the applicant's policy number. The insurance must cover any vehicle
12 bearing dealer or demonstrator license plates that is offered for demonstration or loan to, or otherwise
13 operated by, a customer in the regular course of the applicant's business;

14 (d) the geographic location of the physical lot or lots upon which vehicles will be displayed for sale
15 and a permanent nonresidential building will be maintained to store the actual physical or electronic records
16 resulting from the purchase, sale, trade, or consignment of vehicles for which licensure is sought. An
17 applicant may use more than one location to display vehicles for sale, ~~provided if~~ the maximum distance
18 between each display lot does not exceed 200 feet and the distance between a display lot and the building
19 in which vehicle sales records are stored does not exceed 1,000 feet.

20 (e) for each geographic location specified in the application, evidence of the applicant's compliance
21 with applicable local land use planning, zoning, and business permitting requirements, if any. Evidence of
22 compliance may be documented by means of a written verification of compliance signed by the authorized
23 representative of the local land use planning or zoning board or the local business permitting agency.

24 (f) a diagram or plat showing the geographic location, lot dimensions, and building and sign
25 placement for the applicant's proposed established place of business, along with two or more photographs
26 of the geographic location, building premises, and sign, as prescribed by the department;

27 (g) a certification by the applicant that the applicant is a bona fide dealer in new motor vehicles,
28 used motor vehicles, used recreational vehicles, trailers, motorcycles, quadricycles, or special mobile
29 equipment;

30 (h) if the applicant is seeking a new motor vehicle dealer's license:

(i) the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement and the name and make of all motor vehicles to be handled by the applicant;

(ii) the geographic location or locations, specified in writing, upon which the applicant will provide and maintain a permanent building to display and sell new motor vehicles and offer and maintain a bona fide service department for the repair, service, and maintenance of the motor vehicles;

(iii) otherwise meet the requirements of part 2 of this chapter; and

(iv) if the applicant is applying for a new recreational vehicle dealer's license, certification that the person is recognized by a manufacturer, importer, or distributor as a dealer in new recreational vehicles.

(5) If an applicant for a new motor vehicle or used motor vehicle, new or used recreational vehicle, or trailer dealer's license wants to maintain more than one established place of business, the applicant shall file a separate license application for each proposed ~~established~~ place of business and otherwise qualify for licensure at each place separately.

(6) Each application under this section must be accompanied by an application fee of \$5 and one or more of the following license fees based on the type of dealer's license being sought:

(a) \$25 for a new motor vehicle dealer's license;

(b) \$25 for a used motor vehicle dealer's license;

(c) \$25 for a new or used recreational vehicle dealer's license; or

(d) \$25 for a motorcycle or trailer dealer's license.

(7) The applicant for a dealer's license shall also file with the application a bond of ~~\$25,000~~ \$35,000 for a license as a new motor vehicle dealer, a used motor vehicle dealer, a new or used recreational vehicle dealer, or a trailer dealer. Applicants for a motorcycle dealer's license shall file a bond in the sum of \$10,000. All bonds must be conditioned that the applicant shall conduct the business in accordance with the requirements of the law. The bond may extend to any other type of dealer license issued to the applicant at the same geographic location, provided that all types of licenses are indicated on the face of the bond. All bonds must be approved by the department, must be filed in its office, and must be renewed annually."

Section 2. Section 61-4-120, MCA, is amended to read:

"61-4-120. Application for auto auction license -- general regulations. (1) A person, firm,

1 association, or corporation that takes possession of a motor vehicle owned by another person through
2 consignment, bailment, or any other arrangement for the purpose of selling the motor vehicle to the
3 highest bidder when all buyers are licensed motor vehicle dealers, wholesalers, or wrecking facilities shall
4 file by mail or otherwise in the office of the department a verified application for licensure as an auto
5 auction. The application must be made in the following manner:

6 (a) Each application and all of the information contained in it must be verified by the department
7 or an authorized representative of the department on a form to be furnished by the department for that
8 purpose. The application must provide the following information:

9 (i) the name in which the business is to be conducted and the location of premises, including street
10 address, city, county, and state, where records are kept, sales are made, and motor vehicle stock is
11 displayed as an established place of business that displays a sign indicating the firm name and that
12 vehicles are offered for sale. The letters on the sign must be clearly visible and readable to the major
13 avenue of traffic at a minimum distance of 150 feet.

14 (ii) the name and address of all owners or persons having an interest in the business. In the case
15 of a corporation, the names and addresses of the president and secretary are sufficient.

16 (iii) a statement that the applicant is authorized to auction used motor vehicles, recreational
17 vehicles, trailers, semitrailers, special mobile equipment, motorcycles, and quadricycles under one license.
18 A licensed auto auction may not auction a new motor vehicle except when authorized by a new motor
19 vehicle manufacturer, importer, distributor, or representative, for the purpose of conducting a
20 closed-factory fleet sale to dispose of new motor vehicles by the franchisor (manufacturer, distributor, or
21 importer) to franchisee purchasers when the purchasers are licensed new motor vehicle dealers purchasing
22 new motor vehicle line-makes authorized by their respective franchise, sales, or distributor agreements.
23 An auto auction licensed under the provisions of this section shall notify and update the department with
24 current fleet sale agreements between the auto auction and franchisor. An auto auction may not conduct
25 a factory fleet sale unless authorized or appointed by a franchisor licensed under part 2 of this chapter.

26 (b) Each application must be accompanied by a bond of ~~\$25,000~~ \$35,000 and must be
27 conditioned that the applicant shall conduct business in accordance with the requirements of the law. All
28 bonds must run to the state of Montana, must be approved by the department and filed in its office, and
29 must be renewed annually.

30 (2) An auto auction's license must be renewed and paid for annually to the department, and an

1 application for relicensure must be filed by January 1 of each year. The fee required for each first-time
2 applicant is \$500 and for subsequent renewal applications is \$100 each year. Upon receipt of a properly
3 completed application, fee, and bond, the department shall issue the auto auction license and assign an
4 auto auction license number for each applicant in a manner determined by the department. Auto auctions
5 dealing in motor vehicles may sell only to licensed dealers and wholesalers.

6 (3) Auto auctions that are licensed under this section and that hold a current license number may
7 issue temporary permits, which may be displayed and used by a buyer to operate an unregistered vehicle
8 purchased from the auto auction. The temporary permit is valid for a period of 72 hours from the time of
9 purchase and may be used only for the purpose of driving or transporting a vehicle from the auction
10 premises to the purchaser's established place of business or point of destination. Temporary permits must
11 be on a form prescribed by the department and must contain the name, address, and license number of
12 the purchaser, the date of sale, the name, address, license number, and authorized signature of the auto
13 auction, and a description of the vehicle, including its serial number. The department shall collect a fee of
14 \$10 from the auto auction for each temporary permit, and the auto auction may charge a vehicle purchaser
15 no more than \$10 for the issuance of each permit to offset the cost of the permit. It is unlawful for the
16 auto auction to issue more than one temporary permit per vehicle sale.

17 (4) A licensed auto auction may apply for and may be authorized by the department to purchase
18 and use license plates of a type and amount approved by the department, upon payment of a fee to the
19 department to offset the cost of production. Licensed auto auctions may use the license plates to transport
20 inventory vehicles from a point of storage or a point of delivery in this state to the auto auction's place
21 of business, for road testing authorized vehicles, or for moving vehicles for purposes of repairing, painting,
22 upholstering, polishing, and related activities. One license plate is required to be conspicuously displayed
23 on the rear of the vehicle. Auto auctions may appoint designated persons, partnerships, corporations,
24 service stations, or repair garages to use the license plate only when conducting work for the auto auction
25 involving repairing, painting, upholstering, polishing, or performing similar types of work upon a vehicle.
26 Upon application for an auto auction license, the applicant, if requesting the license plates, shall submit
27 a sworn affidavit on a form prescribed by the department, listing each authorized person designated by
28 the auction to use the license plates. The auto auction is responsible for reporting any changes to the
29 affidavit within 72 hours after the amendment has occurred. An auto auction licensed under the provisions
30 of this section is liable for the proper use of the license plates, which may not be used for private

1 purposes. The department may revoke an auto auction's 72-hour temporary permit and license plate
2 privileges if an auction issues, authorizes the use of, or uses a temporary permit or the license plate in
3 violation of the provisions of this section.

4 (5) (a) Each auto auction shall keep a book or record, in a form and manner subject to approval
5 by the department, of the purchases, sales, or exchanges or the receipts for the purpose of sale of any
6 motor vehicle, a properly completed copy of a temporary permit issued to a vehicle purchaser, the date
7 of title transfer, and a description of the motor vehicle, together with the name and address of the seller,
8 the purchaser, and the alleged owner or other person from whom the motor vehicle was purchased or
9 received or to whom it was sold or delivered. The description in the case of a motor vehicle must include:

10 (i) the vehicle identification number and engine number, if any; and

11 (ii) a statement that a number has been obliterated, defaced, or changed, if it has.

12 (b) An auto auction licensed under this section shall validate the sale of a motor vehicle through
13 its auction by stamping its name and license number upon the certificate of ownership at a location on the
14 front or back of the certificate, at the margin in the assignment section as executed between the transferor
15 and transferee. An auto auction's stamp must be legible and may not interfere with the information
16 recorded on the certificate between the transferor and transferee. If the certificate of ownership lacks
17 adequate space for the auto auction to place its stamp, the auction may provide the transferee a copy of
18 the auction invoice bearing the:

19 (i) name and license number of the auction, along with an indication of the vehicle year, make,
20 model, and identification number;

21 (ii) name, address, and signature of the transferor;

22 (iii) name, license number, and signature of the transferee; and

23 (iv) date the vehicle was sold through the auction.

24 (c) The invoice must be attached to the certificate of ownership and must be presented to the
25 department with any application for title.

26 (d) An auto auction shall retain, for 5 years, odometer disclosure information, including the name
27 of the owner on the date the auto auction took possession of the motor vehicle, the name of the buyer,
28 the vehicle identification number, and the odometer reading on the date the auto auction took possession
29 of the motor vehicle. The odometer information may be retained in any way that is systematically
30 retrievable and is not required to be maintained on any special disclosure form. The information may be

1 part of the auction receipt or invoice or be maintained as a portion of a computer database or manual file.
2 An auto auction that executes a transfer of ownership as an agent on behalf of a seller or buyer is liable
3 for providing an odometer disclosure statement for the seller or an odometer disclosure acknowledgment
4 for the buyer under the provisions of 61-3-206."

5

6 **Section 3.** Section 61-4-125, MCA, is amended to read:

7 **"61-4-125. Wholesaler's license.** (1) (a) The department is authorized to issue a wholesaler's
8 license to any person that it determines is qualified to hold a license under the provisions of this section.

9 (b) A wholesaler is authorized to sell used motor vehicles, used recreational vehicles, trailers,
10 motorcycles, quadricycles, or special mobile equipment. However, a wholesaler may sell a vehicle only to
11 a dealer, an auto auction, or another wholesaler. Retail sale of vehicles by a wholesaler is not allowed.

12 (c) A wholesaler's license issued by the department has a term of 1 calendar year, commencing
13 on or after January 1 in the year of issue and expiring on December 31 of the same year.

14 (d) The department shall design and issue wholesaler demonstrator plates of a similar sequence
15 to demonstrator plates issued to dealers but that conspicuously display the term "wholesaler" or the
16 abbreviation "W".

17 (2) To qualify for a wholesaler's license, an applicant shall submit a completed application, in a
18 form prescribed by the department, that provides the following:

19 (a) the name under which the applicant intends to conduct business and the name, address, date
20 of birth, and social security number of any person who possesses or will possess an ownership interest
21 in the business for which the license is sought. If the applicant is a corporation, the personal information
22 required in this subsection (2)(a) must be provided for each corporate officer and the person designated
23 by the corporation to manage or oversee the dealership.

24 (b) for each person subject to the provisions of subsection (2)(a) whether the person has:

25 (i) an ownership interest in a vehicle dealership or wholesaler business in Montana or another
26 jurisdiction and if so, the name and address of each dealership or wholesaler; and

27 (ii) been found guilty of, or pleaded guilty to, a felony in this or any other jurisdiction, and if so,
28 provide a summary of the conduct giving rise to the felony charge, including the dates of the conduct and
29 any judicial proceeding pertaining to the conduct, and the name and address of any court in which the
30 matter was heard;

(c) the name, address, and telephone number of the insurance carrier from whom the applicant has acquired garage keepers liability insurance and the name, address, and telephone number of the local insurance agent for the carrier and the applicant's policy number. The insurance must cover any vehicle bearing a wholesaler demonstrator plate that is offered for demonstration or loan to, or otherwise operated by, a customer in the regular course of the applicant's business.

(d) the street address of the permanent nonresidential building or office where business records will be kept and available for inspection by the department; and

(e) a bond of ~~\$25,000~~ \$35,000 filed with the department on behalf of the applicant. The bond must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. The bond must be approved by the department and subject to annual renewal.

(3) The application fee for a wholesaler's license is \$5, and the license fee is \$25. Both fees must accompany an original or renewal wholesaler's license application.

(4) Wholesalers may not be issued or use dealer plates, as provided in 61-4-102. However, a wholesaler may be issued and is authorized to display and use a wholesaler demonstrator plate on any type of vehicle that a wholesaler is authorized to sell. The fee for a wholesaler demonstrator plate is \$3. To the extent not inconsistent with this section, use of wholesaler demonstrator plates is otherwise governed by 61-4-129.

(5) (a) A wholesaler's license must be renewed annually, and application for renewal must be filed on or before December 31 of the expiring license term.

(b) To qualify for renewal of a wholesaler's license, a wholesaler must submit a completed application, in a form prescribed by the department, updating prior submitted information, as originally supplied under subsection (2).

(c) Additionally, the wholesaler shall certify, under penalty of law, that 12 or more vehicles of the type authorized under the license were sold by the wholesaler to a dealer, auto auction, or another wholesaler during the expiring license term. A wholesaler who was licensed for less than a full calendar year in the expiring term shall certify, under penalty of law, to the sale of an average of at least one vehicle a calendar month, or portion of a calendar month, during which the expiring license was in effect.

(d) A wholesaler who fails to meet the sales requirements for license renewal under this section is not eligible for license renewal and may not submit an application for another wholesaler's license or a used motor vehicle dealer's license for a period of 12 months from the expiration of the wholesaler's most

1 recent license term.

2 (6) A wholesaler whose completed renewal application has been received by the department on
3 or before December 31 of the expiring license term may, if necessary, operate the business and display
4 wholesaler demonstrator plates under the expired license through February 15 of the following year."

5 - END -